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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,402	09/10/2003	Eric G. Lott	LOTA101	5840
7590	12/16/2004		EXAMINER	
FRANK J. DYKAS			GREEN, CHRISTY MARIE	
DYKAS, SHAVER & NIPPER, LLP			ART UNIT	PAPER NUMBER
P.O. Box 877				3635
Boise, ID 83701-0877				

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
10/660,402	LOTT, ERIC G.	
Examiner	Art Unit	
Christy M Green	3635	NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 10 September 2003.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-11 and 13-16 is/are rejected.  
7) Claim(s) 12 is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date 12/10/04.

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: Attached figures (i)

## DETAILED ACTION

This is a first office action for serial number 10/660402, entitled Engineered lumber studs for interior wall construction, filed on September 10, 2003.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Emmert, US patent # 5,081,810.

Emmert discloses the claimed invention an engineered lumber stud comprising a first skin piece (14) positioned generally parallel to a second skin piece (16), said first and second skin pieces attaching to and interconnected by a foam core piece (12) positioned there-between; at least one of said first and second skin pieces (14, 16) is comprised of a lumber panel and oriented strand board (column 3, lines 3-5); said foam core piece comprises expanded polystyrene foam (column 3, lines 6-8); said stud defines a channel (attached figure 2) defined by said first skin piece (14), said second skin piece (16) and said foam core piece (12); said channel configured to receive at least one top plate (66 – figure 7), a bottom plate (64 – figure 7); stud defines a channel (38) defined by said first skin piece (14), said second skin piece (16) and said foam core piece (12); said channel (38) configured to receive at least one spacer (40) configured for attachment to at least one bottom plate (64) and top plate (66); a wall panel (figure

7) comprising: a plurality of spatially positioned, generally parallel engineered lumber studs (10), at least one top plate (66) attached to a top portion of each of said studs; and at least one bottom plate (64) attached to a bottom portion of each of said studs, wherein said studs, said top plate and said bottom plate cooperate to form said wall panel (figure 7); each of said studs defines a first channel (attached figure 2) within said top portion of said stud, said first channel defined by said first skin (14), said second skin (16) and said foam core (12), said first channel configured to receive said top plate (66) therein; and wherein each of said studs defines said second channel within a bottom portion of said stud, said second channel (attached figure 2) defined by said first skin, said second skin and said foam core, said second channel configured to receive said bottom plate (64) therein.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Emmert.

Emmert discloses the claimed invention as stated above including said first and second skin pieces each define a width, wherein said foam core piece defines a depth. Emmert does not disclose that the depth is greater than said width. Although Emmert discloses a depth and a width of the first and second skins, and foam core, it would have been an obvious matter of design choice to provide the depth being greater than

the width, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emmert in view of Nixon, US Patent # 6,430,889.

Emmert discloses the claimed invention as stated above including a method of building an engineered lumber stud comprising the step of creating a panel body having a first structural skin interconnected via an interconnectiong insulting foam core to a second structural skin (figure 7). Emmert does not disclose the step of cutting through first and second structural skins.

Nixon teaches that it is known in the art to provide the step of cutting through first and second structural skins (78 - column 9, lines 57-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the step of cutting thorough the first and second skins as taught by Nixon with the structure of Emmert in order to create a plurality of engineered lumber studs which would provide smaller panels or studs to allow for more variation in the shapes of the wall by placing the panels or studs at an angle to one another for aesthetic appeal of the user.

#### ***Allowable Subject Matter***

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cl  
Cg  
December 10, 2004

YMP  
Christy M. Hiltz

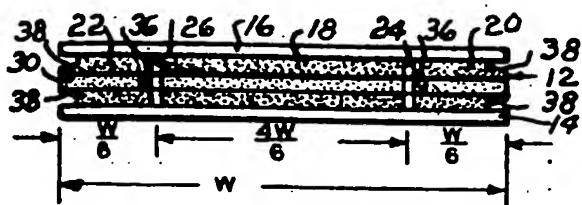


FIG. 3

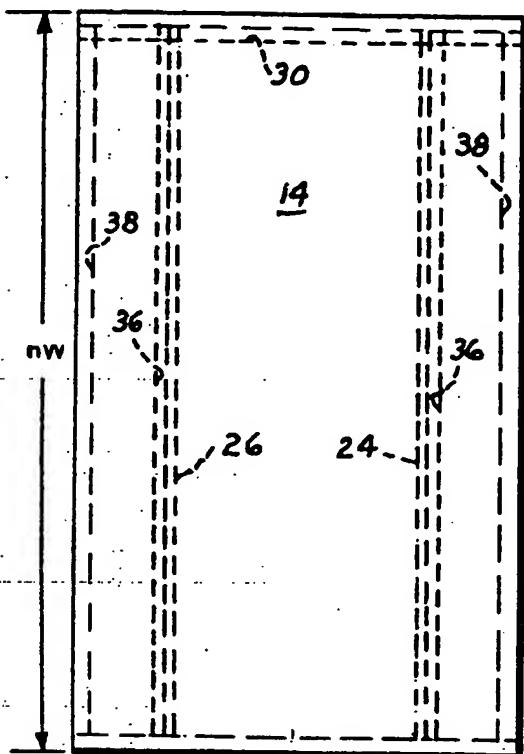


FIG. 1

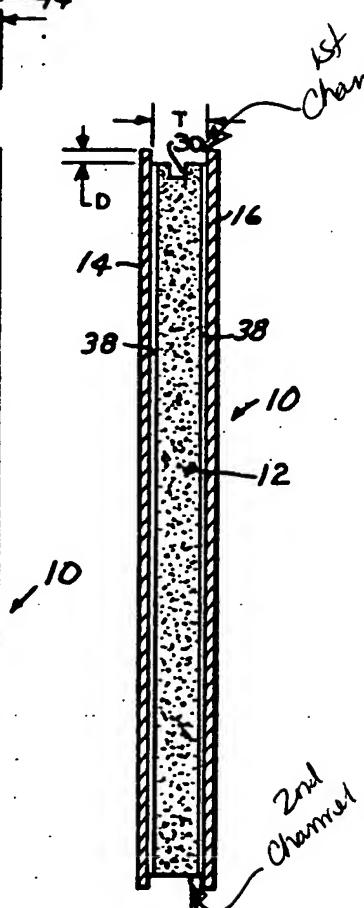


FIG. 2

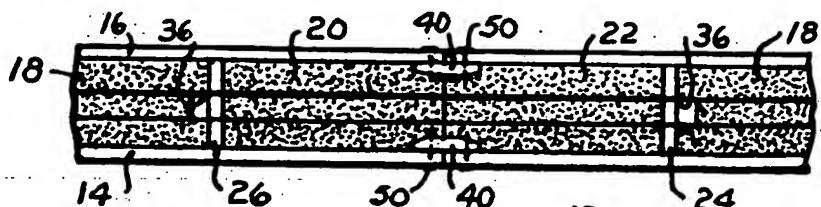


FIG. 4

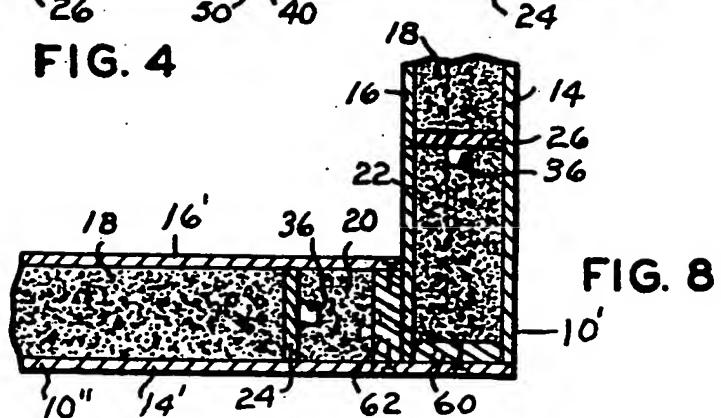


FIG. 8